

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Mechanics Lien Act is amended by changing  
5 Sections 1 and 21 as follows:

6 (770 ILCS 60/1) (from Ch. 82, par. 1)

7 Sec. 1. Contractor defined; amount of lien; waiver of lien;  
8 attachment of lien; agreement to waive; when not enforceable.

9 (a) Any person who shall by any contract or contracts,  
10 express or implied, or partly expressed or implied, with the  
11 owner of a lot or tract of land, or with one whom the owner has  
12 authorized or knowingly permitted to contract, to improve the  
13 lot or tract of land or for the purpose of improving the tract  
14 of land, or to manage a structure under construction thereon,  
15 is known under this Act as a contractor and has a lien upon the  
16 whole of such lot or tract of land and upon adjoining or  
17 adjacent lots or tracts of land of such owner constituting the  
18 same premises and occupied or used in connection with such lot  
19 or tract of land as a place of residence or business; and in  
20 case the contract relates to 2 or more buildings, on 2 or more  
21 lots or tracts of land, upon all such lots and tracts of land  
22 and improvements thereon for the amount due to him or her for  
23 the material, fixtures, apparatus, machinery, services or

1 labor, and interest at the rate of 10% per annum from the date  
2 the same is due. This lien extends to an estate in fee, for  
3 life, for years, or any other estate or any right of redemption  
4 or other interest that the owner may have in the lot or tract  
5 of land at the time of making such contract or may subsequently  
6 acquire and this lien attaches as of the date of the contract.

7 (b) As used in subsection (a) of this Section, "improve"  
8 means to furnish labor, services, material, fixtures,  
9 apparatus or machinery, forms or form work in the process of  
10 construction where cement, concrete or like material is used  
11 for the purpose of or in the building, altering, repairing or  
12 ornamenting any house or other building, walk or sidewalk,  
13 whether the walk or sidewalk is on the land or bordering  
14 thereon, driveway, fence or improvement or appurtenances to the  
15 lot or tract of land or connected therewith, and upon, over or  
16 under a sidewalk, street or alley adjoining; or fill, sod or  
17 excavate such lot or tract of land, or do landscape work  
18 thereon or therefor; or raise or lower any house thereon or  
19 remove any house thereto, or remove any house or other  
20 structure therefrom, or perform any services or incur any  
21 expense as an architect, structural engineer, professional  
22 engineer, land surveyor or property manager in, for or on a lot  
23 or tract of land for any such purpose; or drill any water well  
24 thereon; or furnish or perform labor or services as  
25 superintendent, time keeper, mechanic, laborer or otherwise,  
26 in the building, altering, repairing or ornamenting of the

1 same; or furnish material, fixtures, apparatus, machinery,  
2 labor or services, forms or form work used in the process of  
3 construction where concrete, cement or like material is used,  
4 or drill any water well on the order of his agent, architect,  
5 structural engineer or superintendent having charge of the  
6 improvements, building, altering, repairing or ornamenting the  
7 same.

8 (c) The taking of additional security by the contractor or  
9 sub-contractor is not a waiver of any right of lien which he  
10 may have by virtue of this Act, unless made a waiver by express  
11 agreement of the parties and the waiver is not prohibited by  
12 this Act.

13 (d) An agreement to waive any right to enforce or claim any  
14 lien under this Act, or an agreement to subordinate the lien,  
15 where the agreement is in anticipation of and in consideration  
16 for the awarding of a contract or subcontract, either express  
17 or implied, to perform work or supply materials for an  
18 improvement upon real property is against public policy and  
19 unenforceable. This Section does not prohibit release of lien  
20 under subsection (b) of Section 35 of this Act, nor does it  
21 prohibit an agreement to subordinate a mechanics lien to a  
22 mortgage lien that secures a construction loan if that  
23 agreement is made after more than 50% of the loan has been  
24 disbursed to fund improvements to the property ~~or prohibit~~  
25 ~~subordination of the lien, except as provided in Section 21.~~

26 (Source: P.A. 94-627, eff. 1-1-06.)

1 (770 ILCS 60/21) (from Ch. 82, par. 21)

2 Sec. 21. Sub-contractor defined; lien of sub-contractor;  
3 notice; size of type; service of notice; amount of lien;  
4 default by contractor.

5 (a) Subject to the provisions of Section 5, every mechanic,  
6 worker or other person who shall furnish any labor, services,  
7 material, fixtures, apparatus or machinery, forms or form work  
8 for the contractor, or shall furnish any material to be  
9 employed in the process of construction as a means for  
10 assisting in the erection of the building or improvement in  
11 what is commonly termed form or form work where concrete,  
12 cement or like material is used in whole or in part, shall be  
13 known under this Act as a sub-contractor, and shall have a lien  
14 for the value thereof, with interest on such amount from the  
15 date the same is due, from the same time, on the same property  
16 as provided for the contractor, and, also, as against the  
17 creditors and assignees, and personal and legal  
18 representatives of the contractor, on the material, fixtures,  
19 apparatus or machinery furnished, and on the moneys or other  
20 considerations due or to become due from the owner under the  
21 original contract.

22 (b) If the legal effect of a provision in any contract  
23 between the owner and contractor or contractor and  
24 subcontractor is that no lien or claim may be filed or  
25 ~~maintained by any one and the waiver is not prohibited by this~~

1 ~~Act,~~ or that such contractor's lien shall be subordinated to  
2 the interests of any other party, and the provision is not  
3 prohibited by this Act, such provision shall be binding if made  
4 as part of an agreement not prohibited by this Act. ~~such~~  
5 ~~provision shall be binding; but the only admissible evidence~~  
6 ~~thereof as against a subcontractor or material supplier, shall~~  
7 ~~be proof of actual notice thereof to him or her before his or~~  
8 ~~her contract is entered into. Such subordination provision~~  
9 ~~shall not be binding on the subcontractor unless set forth in~~  
10 ~~its entirety in writing in the contract between the contractor~~  
11 ~~and subcontractor or material supplier.~~

12 (c) It shall be the duty of each subcontractor who has  
13 furnished, or is furnishing, labor, services, material,  
14 fixtures, apparatus or machinery, forms or form work for an  
15 existing owner-occupied single family residence, in order to  
16 preserve his lien, to notify the occupant either personally or  
17 by certified mail, return receipt requested, addressed to the  
18 occupant or his agent of the residence within 60 days from his  
19 first furnishing labor, services, material, fixtures,  
20 apparatus or machinery, forms or form work, that he is  
21 supplying labor, services, material, fixtures, apparatus or  
22 machinery, forms or form work provided, however, that any  
23 notice given after 60 days by the subcontractor shall preserve  
24 his lien, but only to the extent that the owner has not been  
25 prejudiced by payments made prior to receipt of the notice. The  
26 notification shall include a warning to the owner that before

1 any payment is made to the contractor, the owner should receive  
2 a waiver of lien executed by each subcontractor who has  
3 furnished labor, services, material, fixtures, apparatus or  
4 machinery, forms or form work.

5 The notice shall contain the name and address of the  
6 subcontractor or material man, the date he started to work or  
7 to deliver materials, the type of work done and to be done or  
8 the type of materials delivered and to be delivered, and the  
9 name of the contractor requesting the work. The notice shall  
10 also contain the following warning:

11 "NOTICE TO OWNER

12 The subcontractor providing this notice has performed work  
13 for or delivered material to your home improvement contractor.  
14 These services or materials are being used in the improvements  
15 to your residence and entitle the subcontractor to file a lien  
16 against your residence if the services or materials are not  
17 paid for by your home improvement contractor. A lien waiver  
18 will be provided to your contractor when the subcontractor is  
19 paid, and you are urged to request this waiver from your  
20 contractor when paying for your home improvements."

21 Such warning shall be in at least 10 point bold face type.  
22 For purposes of this Section, notice by certified mail is  
23 considered served at the time of its mailing.

24 (d) In no case, except as hereinafter provided, shall the  
25 owner be compelled to pay a greater sum for or on account of  
26 the completion of such house, building or other improvement

1 than the price or sum stipulated in said original contract or  
2 agreement, unless payment be made to the contractor or to his  
3 order, in violation of the rights and interests of the persons  
4 intended to be benefited by this Act: Provided, if it shall  
5 appear to the court that the owner and contractor fraudulently,  
6 and for the purpose of defrauding sub-contractors fixed an  
7 unreasonably low price in their original contract for the  
8 erection or repairing of such house, building or other  
9 improvement, then the court shall ascertain how much of a  
10 difference exists between a fair price for labor, services,  
11 material, fixtures, apparatus or machinery, forms or form work  
12 used in said house, building or other improvement, and the sum  
13 named in said original contract, and said difference shall be  
14 considered a part of the contract and be subject to a lien. But  
15 where the contractor's statement, made as provided in Section  
16 5, shows the amount to be paid to the sub-contractor, or party  
17 furnishing material, or the sub-contractor's statement, made  
18 pursuant to Section 22, shows the amount to become due for  
19 material; or notice is given to the owner, as provided in  
20 Sections 24 and 25, and thereafter such sub-contract shall be  
21 performed, or material to the value of the amount named in such  
22 statements or notice, shall be prepared for use and delivery,  
23 or delivered without written protest on the part of the owner  
24 previous to such performance or delivery, or preparation for  
25 delivery, then, and in any of such cases, such sub-contractor  
26 or party furnishing or preparing material, regardless of the

1 price named in the original contract, shall have a lien  
2 therefor to the extent of the amount named in such statements  
3 or notice. In case of default or abandonment by the contractor,  
4 the sub-contractor or party furnishing material, shall have and  
5 may enforce his lien to the same extent and in the same manner  
6 that the contractor may under conditions that arise as provided  
7 for in Section 4 of this Act, and shall have and may exercise  
8 the same rights as are therein provided for the contractor.

9 (e) Any provision in a contract, agreement, or  
10 understanding, when payment from a contractor to a  
11 subcontractor or supplier is conditioned upon receipt of the  
12 payment from any other party including a private or public  
13 owner, shall not be a defense by the party responsible for  
14 payment to a claim brought under Section 21, 22, 23, or 28 of  
15 this Act against the party. For the purpose of this Section,  
16 "contractor" also includes subcontractor or supplier. The  
17 provisions of Public Act 87-1180 shall be construed as  
18 declarative of existing law and not as a new enactment.

19 (Source: P.A. 94-615, eff. 1-1-06; 94-627, eff. 1-1-06.)

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.